

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 872 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES//3 to 5 :No

ATULKUMAR JAYANTILAL RAWAL

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MS MITA S PANCHAL for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2000

ORAL JUDGEMENT

Rule returnable today. Mr. Patel, learned advocate appears and waives service of rule on behalf of respondent no. 1 and Ms. Panchal, learned advocate waives service of rule on behalf of respondent no. 2.

2. Heard the learned advocates for the respective parties. With the consent of the learned advocates, this matter is taken up for final hearing today.

3. The brief facts of the present writ petition are that petitioner was working with the respondent-Panchayat as a Work-charge employee. His services came to be terminated with effect from 30th June, 1993. Feeling aggrieved by the said order of termination, the petitioner approached the Labour Court, Junagadh. The said reference No. (LCJ) 1440 of 1990 came to be allowed by the Labour Court, Junagadh vide Award dated 20th November, 1995 whereby the respondent-Panchayat was directed to reinstate the petitioner-Atul Kumar Jayantibhai Rawal to his original post with full backwages within a period of thirty days of the date of publication of the said Award. In pursuance to the Award passed by the Labour Court, Junagadh, an application was submitted by the petitioner to the Executive Engineer on 31st January, 1996 with a request to permit him to resume his duties. In response to the said application, the Executive Engineer vide his communication dated 5th February, 1996 informed the petitioner that legal opinion in the matter is sought for by the Panchayat in respect to challenging the Award in question before the higher forum or not. Thereafter, by another communication dated 21st March, 1996, the petitioner was informed that the said Award is brought under challenge before this Court in Special Civil Application No. 5186 of 1996. The petitioner had also moved this Court by filing an application being Special Civil Application No. 6126 of 1996 for implementing the Award in question. Both these petitions were heard together and disposed of by this Court [Coram : J.N Bhatt, J.] by a common judgment and order dated 13th December, 1996. In the concluding paragraph of the said judgment, this Court has observed that, 'in the result, the first petition viz., Special Civil Application No. 5186 of 1996 is partly allowed. The petitioner who is the original opponent, is directed to reinstate the workman [petitioner herein] in service with 40 per cent backwages within a period of thirty days from today failing which workman will be entitled to interest at the rate of 15 per cent on backwages till the date of reinstatement. The second application, Special Civil Application No. 6126 of 1996 is also partly allowed accordingly.' Thereafter, petitioner again approached the Executive Engineer by a letter dated 13th January, 1997 requesting him to allow him to resume duty in pursuance to the order passed by this Court on 13th December, 1996. A similar request was also made by the

petitioner on 12th April, 1999.

4. Mr. Pathak, learned advocate appearing for the petitioner vehemently argued that inspite of an Award of reinstatement in favour of the petitioner, and also an order of this Court directing the respondent to reinstate the petitioner, till this date, the petitioner has not been reinstated in service by the respondent and also no amount of backwages as ordered has been paid to him. According to Mr. Pathak, the petitioner is out of job since 1983 and even though he had succeeded before two Courts, he is still facing starvation situation. Mr. Pathak submitted that petitioner has made repeated requests to the concerned authorities, however, there is no response from the other end. Mr. Pathak ultimately requested this Court to direct the respondents to implement the Award and honour the Order passed by this Court in Special Civil Application Nos. 5186 of 1996 & 6126 of 1996 dated 13th December, 1996. In support of his arguments, Mr. Pathak has placed reliance upon a decision of Apex Court in the matter of Daily rated Casual Labour employed under Postal Department v. Union of India & Ors., reported in AIR (1987) SC 2342.

On the other hand, Mr. Patel, learned advocate appearing for the respondents submitted that he is not aware of the fact as to whether the Order passed by this Court in the aforesaid writ petitions is under challenge or not. Mr. Patel, submitted that if at all the petitioner is having alternative efficacious remedy for enforcing the Award and the order passed by this Court.

I have considered submissions made by both the learned advocates. In the present case, almost all facts are undisputed between the parties. Mr. Pathak has pointed out that petitioner has not received any notice or stay from the High Court in respect to the challenge of order passed by this Court on 13th December, 1996, and therefore, it is the duty of the respondent to implement the order dated 13th December, 1996. Considering the contention raised by Mr. Patel that petitioner is having alternative remedy, and therefore, this Court cannot exercise the powers under Art. 226 of the Constitution. The petitioner is having alternative remedy and for that there cannot be any difference of opinion but the hard fact is required to be kept in mind that the Award passed by the Labour Court is dated 20th November, 1995 and the order passed by this Court is 13th December, 1996 and the petitioner's service was terminated on 30th June, 1983. A person who was out of job since 1983, and after having two rounds of litigations, he ultimately succeeded and

inspite of that fact, the respondent; who is the State Authority, has not implemented the order passed by this Court and nothing has been pointed out by the respondent that the said order of 13th December, 1996 has been challenged before the higher forum or so. Further, there is no justification produced or pointed out by the respondent for not implementing the order passed by this Court on 13th December, 1996. Now, in respect to the contention of alternative remedy, two remedies are open to the petitioners - viz., one is to file recovery application under the provisions of Sec. 33 C(2) of the Industrial Disputes Act, 1947 and the another is to file a contempt petition against the non-implementation of the order made by this Court. The question of limitation will arise in contempt proceedings and in recovery application, the Labour Court will decide the same after some considerable time but in both these case, the ultimate sufferer would be the petitioner. Not only that but the respondent is also sufferer to the extent that without taking work from the petitioner, the respondent Authority shall be required to pay backwages from the date of award. Therefore, if the petitioner is entitled to reinstatement as a matter of right; in pursuance to the award and order passed by this Court, then it is the duty of the respondent to reinstate the petitioner in service immediately. At this juncture, the observations made by the Apex Court in a reported decision in AIR (1987) SC 2342 are relevant. The same reads as under :-

`... Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wages structure is such that a worker is always paid less than what he produces. So why allow people to remain idle ? Anyway they have got to be fed and clothed. There are several types of work such as road making railway construction, house building, irrigation projects, communications, etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saying all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan : 'Produce or Perish'. It is not an employ slogan.

We fail to produce more at our own peril.'

After having considered the observations made by the Apex Court, according to my opinion, this petition is required to be allowed with a direction to the respondents to reinstate the petitioner in service and to pay him backwages from the date of his termination till the date of Award passed by the Labour Court dated 20th November, 1995, and thereafter, the respondents shall have to pay full wages to the petitioner from 20th November, 1995 till the date of his actual reinstatement. Considering the fact that the respondent is a State Authority not respecting the order passed by this Court, I am directing the respondent to reinstate the petitioner in service within a period of four weeks from the date of receipt of copy of this order and to pay 40% of the backwages for the interim period i.e., from 30th June, 1983 to 20th November, 1995. Respondents are further directed to pay full wages from 21st November, 1995 till the date of actual reinstatement of the petitioner within a period of three months from the date of receipt of copy of this order. In view of the above observations and direction, the present writ petition is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[H.K Rathod, J.]

Prakash*